IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4453 OF 1988

M/s.Sea Enterprises, a
partnership firm by its partner,
Shri Shantilal Shivaji Motta,
residing at 7,Ketki Apartment,
Opposite Municipal School,
Mulund (E), Bombay 400 081. .. Petitioner

versus

1. The Collector, Dist.Raigad
Alibag, having its office
at Alibag.

2. The State of Maharshtra
(Summons of respondents 1
and 2 be served on the
Addl. Govt. Pleader,
High Court(AS) Bombay. .. Respondents

...

Mr.V.M. Thorat for the petitioner.

Mr.C.R. Sonawane, AGP for respondent nos.1 and 2.

**CORAM : Smt.Ranjana Desai &**

**A.P. Deshpande, JJ**

**DATED : 28th July 2006.**

**ORAL JUDGEMENT:- (Per A.P. Deshpande, J)**

1. The petitioner is a partnership firm carrying

on business at Alibag, District Raigad. The petitioner has purchased land bearing CTS 995 and CTS 1236 under registered sale deed dated 21.11.1985 from one Kashinath Govind Chavan, Sou Vilasini Kashinath Chavan and Deepak Kashinath Chavan for a consideration of Rs.2,50,000/-. CTS 995 and 1236 admeasures 1061.89 sq.meters and 257.52 sq.meters respectively. The vendors of the petitioners had purchased the said properties from one Shri Kamat on 11.2.1943 under a registered sale deed. It is undisputed that the petitioner is in occupation/ possession of the properties in question. The Collector issued a show cause notice to the present petitioner, served on one of its partners, dated 12.11.1987. The Collector averred in the show cause notice that the disputed lands bearing CTS 995 and 1236 were leased out in favour of one Waman Mahadeo Kamat in the year 1914 and the lease was for a period of 50 years. Shri Kamat had sold the said lands on 11.2.1943 in favour of one Kashinath Govind Chavan and Chavan in turn sold the property to the present petitioner on 21.11.1984. It is then stated in the show cause notice that the term of the lease had expired in the year 1963 and thereafter there has been no renewal of the lease. A further objection is raised that Shri Kamat had taken

the land from the Government on lease for the purpose of constructing a residential house but no such house was constructed and thereby Shri Kamat had breached the conditions of lease. A further objection is taken in the show cause notice that Shri kamat had sold the land in question without seeking prior permission from the State Government on the basis of the said objections set out in the show cause notice, the Collector called upon the petitioner to show cause as to why the unauthorised construction and the land be not taken in possession by the State Government. The petitioner replied the show cause notice vide reply dated 12.1.1988. The petitioner claimed in the reply that Shri Kamat had the right, title and interest in the property and was very much competent to sell the property in favour of Shri Chavan. It is then stated in the reply that the Sanad issued in favour of Shri Kamat way back in the year 1934, does not provide any feter on the power and authority of Shri Kamat to transfer the property. The terms contained in the Sanad are referred to and it is asserted that the petitioners are in lawful possession of the property having acquired the titled under a registered sale deed. Again on 19.7.1988, a second show cause notice has been served by the Collector on the petitioner and

the same has been elaborately replied vide reply dated 26.7.1988. The second show cause notice re-iterate the grounds set out in the first show cause notice. After affording an opportunity to the petitioner of being heard in the matter, the Collector proceeded to pass an order dated 18.8.1988 which is impugned in this petition holding that the CTS 995 and 1236 are the properties of the State of Maharashtra and directed that the said properties be recorded in the City Survey records as belonging to the State of Maharashtra. Tahsildar was also directed to take possession of the said properties from the petitioner on behalf of the Government. It is this order passed by the Collector dated 18.8.1988 which is challenged in the instant petition.

2. It is the case of the petitioner that the Sanad issued in favour of Shri Kamat under section 133 of the Bombay Land Revenue Code (Bombay Act no.5 of 1879) is a document of title which recognises the rights of the then holder/occupant and the said Sanad would go to indicate that the concerned CTS numbers were legally and validly occupied and possessed by Shri Kamat. It is then contended that as the property has been purchased by the petitioner from Shri Chavan

who in turn has purchased it from Shri Kamat under registered sale deeds, the title stands vested in the petitioner.

3. Per Contra, learned counsel appearing for the respondents submit that the Sanad is, as a matter of fact, a lease under which the concerned CTS numbers were leased out in favour of Shri Kamat in the first instance in the year 1914 and the said lease has been confirmed in the year 1934. Proceeding on the footing that the document in question titled as Sanad is a lease deed, a further case is tried to be made out by the respondents that the conditions of lease were violated by Shri Kamat and Shri Chavan and thus the lease hold rights stood extinguished. Learned counsel then submits that as the properties came to be transferred in favour of the present petitioner in the year 1984 when no lease was in existence, on account of the earlier lease not having been renewed, Shri Chavan was not competent to execute the sale deed in favour of the present petitioner, and hence the petitioner has not acquired any right, title or interest, despite

execution of a Registered sale deed.

. Having regard to the nature of controversy, the most crucial question is what is the nature of the document titled as Sanad. The first Sanad of the year 1914 or its copy is not available on record. The original record from the office of the Collector which is summoned does indicate that possibly a copy of that Sanad was available before the Collector when he heard the matter. However, it is re-iterated that neither the original Sanad of 1914 nor its copy is available. The impugned order passed by the Collector does extract the relevant portion from the Sanad which is of the year 1914. However the Sanad issued in the year 1934 is very much available. It is the case of the respondents that the earlier Sanad of the year 1914 stands confirmed when the Sanad came to be issued in the year 1934. So the basic document which is available is the Sanad issued in the year 1934. We proceed to consider the nature of this document titled as Sanad which has been issued under section 133 of the Bombay Land Revenue Code. Section 133 reads thus:-

> **133. Sanad to be granted without extra charge:-** Every holder of a

> building site as aforesaid shall be entitled, after payment of the said survey-fee, to receive from the Collector without extra charge one or more sanads, in the form of Schedule H or to the like effect specifying by plan and description the extent and conditions of his holding:
>
> Provided that if such holder do not apply for such sanad or sanads at the time of payment of the survey fee or thereafter within six months from the date of the public notice issued by the Collector under the last preceding section, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.
>
> Every such sanad shall be executed on behalf of the Government by such officer as may from time to time be lawfully empowered to execute the same.

4. Section 131 provides that if the State Government shall at any time deem it expedient to direct a survey of the lands other than those used ordinarily for the purposes of agriculture - such survey shall be conducted when a special survey is ordered u/s.131, a Sanad is granted u/s.133 to the holders of a building site, by the Collector in the form prescribed by Schedule H. There are two reported judgements dealing with the nature of the Sanad issued u/s.133. The first judgement is of a Division Bench of this Court reported in AIR 1925 Bom. 477 in the case of ..... .....

Vs..... In the said case, the Sanad in question was issued u/s.133 of the Bombay Land Revenue Code issued after making an enquiry u/s.131. The Division Bench of this Court had to say the following in regard to the Sanad issued u/s.133.

> "Now it is quite true that an entry in the Collector's books that a certain person is the occupant and liable to pay the revenue, does not afford much evidence of title. But when a Sanad is given u/s.133 after due enquiry, in the form of Schedule H, the Sanad itself is a document of title. It contends these words "You are thereby confirmed in the said occupancy exempt from all land revenue, (or subject to the payment of Rs..... per annum to revenue). The terms of your tenure are such that your occupancy is both transferable and heritable, and will be continued by British Government."

. The Division Bench has thus pronounced that a Sanad issued in the prescribed form in Schedule H u/s.133 after due enquiry is by itself a document of title. In the case in hand as well, the Sanad has been issued u/s.133 in Schedule H and after due enquiry is conducted pursuant to an order passed u/s.131. The next judgement is reported in AIR 1934 Bom. 425 in the case of The Sanad considered in the said judgement is of the year 1922. The Sanad was issued u/s.133 in the prescribed form in Schedule H. In both the reported judgements i.e. AIR 1925 and AIR 1939 Bom 425, the dispute was in between the subjects of the crown and not between the crown and its subject. In that context, the Chief Justice delivering his judgement for the Division Bench had to say this :-

> "To my mind, a sanad granted under S.133 is not strictly speaking in the nature of a document of title between litigating parties. It is a document affecting rights only between the Crown and the person to whom it is granted. The object of an inquiry under the Land Revenue Code is to determine the right of Government to revenue, and for that purpose to survey the land and to determine who is the holder and therefore liable to assessment. But an order made under the Land Revenue Code is not, in my opinion, intended to

> operate, and does not operate, finally as a determination of title between subjects of Government. No doubt an order made under the Land Revenue Code is prima facie evidence of title, but it is not conclusive and may be over-ridden as other evidence may be over-ridden. It is not, in my opinion, essential for a person in the position of the plaintiff in this case claiming possession against the defendant, who has been granted a sanad under S.133, to obtain an order setting aside that sanad before he can obtain an order for recovery of possession from a Civil Court.

5. Thus, it would be seen that a sanad issued u/s.133 pursuant to an inquiry order u/s.131 is a document which goes to indicate the rights of the holder in possession and casts an obligation on such a person to pay the land revenue. If the nature of the sanad issued u/s.133 is in the form of recording of rights of a person in occupation of that property, it is crystal clear that at no stretch of imagination could such a document be taken to be a lease deed as it is contended by the respondents. The term contained in the sanad which is at Exhibit-C if translated freely would read thus:

> "You are hereby confirmed in the said occupancy on payment of land Revenue of Rs.4.15 annas per year. The terms

> of your tenure are such that your Khata(occupancy) is both transferable and heritable and will be continued by the British Government, without raising any objection or questions as to the right, to whosoever shall from time to time be the lawful holder of that Khata (occupancy)

6. Thus, the Sanad recognises the right of the holder thereof to transfer the occupancy and to inherit the occupancy. Recognition of the said right is reflected in the sanad. If the nature of the occupancy rights of Shri Kamat, predecessory title of the petitioner, clearly indicate that his rights were transferable and heritable and the Government would continue to recognise the same, the petitioner is the lawful title holder. Only one condition is imposed on the holder of the Sanad and the same is an obligation to pay land revenue which is to undergo a revision after an expiry of 30 years. The Sanad which is of the year 1934 provides that the land would be assessed on expiry of 30 years and the holder would be obliged to pay the revenue as

determined from time to time. This mention of revision of the assessment on expiry of the period of 30 years has been misunderstood by the Collector so as to mean that its 30 years lease, which requires a renewal on expiry of the term of the lease. There is no document of lease placed on record by the respondent Collector. We fail to understand as to on what basis the Collector claims that the land was leased in favour of Shri Kamat way back either in the year 1914 or in the year 1934. The reproduction of the relevant part of the Sanad which is claimed to be of the year 1914 in the order of the Collector also refers to the rights of the holder to be transferable and heritable and the revision of assessment thereunder was to be after a lapse of a period of 50 years. It appears that this stipulation which is referred to in the Collector's order about revision of assessment after 50 years or for that matter the stipulation in the Sanad of the year 1934 about revision of assessment on expiry of 30 years has been misconstrued by the Collector to be a period of lease and hence, he has further assumed that on expiry of that term, the lease need to be renewed. As pointed out by us, with reference to the two judgements of this Court, that the Sanad which is undisputedly one

issued u/s.133 records the rights of the holder and in the instant case, rights of Shri Kamat as recorded to be transferable and heritable. If this be the position of the rights of the predecessor in title of the petitioner qua the lands in question, then the Collector is not at all justified in proceeding under an assumption that Shri Kamat was holding the land under a lease granted by the State Government. At any rate, there is no document which goes to indicate that the State Government had superior right in the land in question vis-a-vis the predecessor in title of the petitioner. We are of the considered view that the Collector has erred in holding that the land belongs to the State Government and has further erred in directing Tahsildar to resume the possession of the properties. As the very issuance of show cause notice was misconceived and was founded on a misconception about the nature of the document titled as Sanad issued u/s.133, the ultimate order is rendered unsustainable in law and the same needs to be quashed and set aside.

7. Writ Petition is allowed. Impugned order passed by the Collector dated 18.8.1988 is quashed and set aside with no orders as to costs. Rule made

absolute in the above terms.

(Smt.Ranjana Desai,J)

(A.P. Deshpande, J)